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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LOGAN HALLIWELL and AARON
12 SLEICHTER,
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14 Plaintiffs,
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16 vs.
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22 A-T SOLUTIONS,
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24 Defendant.
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CASE NO. 13-CV-2014-H (KSC)

ORDER:

**(1) DENYING PLAINTIFFS’
MOTION FOR
RECONSIDERATION [Doc.
No. 42];**

**(2) GRANTING IN PART AND
DENYING IN PART
PLAINTIFFS’ MOTION FOR
IN CAMERA REVIEW [Doc.
No. 43];**

**(3) GRANTING IN PART AND
DENYING IN PART
DEFENDANT’S MOTION TO
STAY OR, ALTERNATIVELY,
TO EXTEND DISCOVERY
CUT-OFF [Doc No. 44];**

**(4) GRANTING IN PART AND
DENYING IN PART
DEFENDANT’S OBJECTIONS
TO MAGISTRATE JUDGE’S
DISCOVERY ORDER [Doc.
No. 53]; and**

**(5) SCHEDULING BRIEFING
DEADLINES FOR CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

On July 31, 2014, Plaintiffs Logan Halliwell and Aaron Sleichter (“Plaintiffs”) filed a motion for reconsideration of the Court’s November 7, 2013 order dismissing Plaintiffs’ California Private Attorney General Act claim without prejudice. (Doc. No. 42.) On August 25, 2014, A-T Solutions (“Defendant”) filed its opposition to Plaintiffs’ motion for reconsideration. (Doc. No. 50.) On August 28, 2014, Plaintiffs filed their reply. (Doc. No. 52.)¹ On July 31, 2014, Plaintiffs also filed a motion for an order requiring Defendant to submit classified evidence for in camera review. (Doc. No. 43.) On August 25, 2014, Defendant filed its opposition to Plaintiffs’ motion for an order requiring in camera review of classified evidence. (Doc. No. 51.) On August 29, 2014, Plaintiffs filed their reply. (Doc. No. 54.) On August 5, 2014, Defendant filed an ex parte motion to stay or, alternatively, to extend the discovery cut-off. (Doc. No. 44.) On August 7, 2014, Plaintiffs filed their opposition to Defendant’s ex parte motion to stay. (Doc. No. 45.) Defendant did not file a reply. On August 29, 2014, Defendant filed an objection to the magistrate judge’s August 15, 2014 order determining discovery disputes. (Doc. No. 53.) On September 5, 2014, Plaintiffs filed a response in opposition to Defendant’s objection. (Doc. No. 56.)

On September 9, 2014, the Court held a hearing on Plaintiffs’ and Defendant’s motions. Paul Jackson and Jeffrey Jackson appeared on behalf of Plaintiffs. Brent Caslin and Kelly M. Morrison appeared on behalf of Defendant. After due consideration, the Court denies Plaintiffs’ motion for reconsideration, grants in part and denies in part Plaintiffs’ motion for an order requiring Defendant to submit classified evidence for in camera review, grants in part and denies in part Defendant’s motion to stay or, alternatively, extend the discovery cut-off, and grants in part and denies in part Defendant’s objection to the magistrate judge’s discovery order without prejudice to

¹The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determines that Plaintiffs’ motion for reconsideration is appropriate for resolution without oral argument and submits the motion on the parties’ papers.

1 further request.²

2 **Background**

3 Plaintiffs Logan Halliwell and Aaron Sleichter are former employees of A-T
4 Solutions. (Doc. No. 1 “Compl.” ¶¶ 7-8.) Defendant A-T Solutions is a contractor for
5 the United States military. (Id. ¶ 10.) Defendant employed Plaintiffs as combat ready
6 instructors and assigned them to give instructions to military personnel at various sites
7 in California. (Id. ¶ 10.)

8 Plaintiffs allege that while employed by Defendant, Defendant treated them as
9 exempt employees under state and federal labor laws. (Id. ¶ 14.) Plaintiffs allege that
10 Defendant should have treated them as non-exempt employees and paid them overtime
11 wages. (Id. ¶¶ 14-16.) Defendant claims Plaintiffs were exempt from California and
12 federal overtime laws under the “learned professional, administrative, and/or teacher
13 exemptions.” (Doc. No. 11 at 8.)

14 Defendant claims it needs to use classified and “official” information to establish
15 that Plaintiffs were exempt employees under California and federal law. (Doc. No. 51
16 at 7.)

17 **Procedural History**

18 On August 29, 2013, Plaintiffs filed their complaint against Defendant. (Id.)
19 Plaintiffs allege Defendant violated the California Labor Code and the Fair Labor
20 Standards Act (“FLSA”) by failing to pay Plaintiffs overtime wages, pay Plaintiffs for

21
22 ²Defendant represented that it has complied with the magistrate judge’s discovery order
23 (Doc. No. 48 at 7-8) except as to active duty military personnel. Plaintiffs contend they need
24 the contact information of active duty military personnel to establish that Navy personnel
25 ordered Plaintiffs to remain on base. Defendant suggested a more practical solution for
26 Plaintiffs to obtain the names and contact information of active duty military personnel would
27 be for Plaintiffs to request the information from the Navy JAG officer with whom both parties
28 have been in contact. The Court agrees. Accordingly, the Court modifies the order
determining discovery disputes (Doc. No. 48) to order Plaintiffs to request, in writing, the
active duty personnel’s contact information from the JAG officer with whom the parties have
been in contact without prejudice to Plaintiffs’ right to renew its request before this Court.
This Order applies only to information relating to active duty military personnel.

1 being held on call, provide proper wage statements, and timely pay all wages due at
 2 termination. (Compl. ¶¶ 19-38.) Plaintiffs' complaint also contained a cause of action
 3 under the California Private Attorney General Act ("PAGA") on behalf of themselves,
 4 the state of California, and other employees. (Id. ¶¶ 39-42.)

5 On September 24, 2013, Defendant filed a motion to dismiss Plaintiffs' PAGA
 6 claim. (Doc. No. 5.) On November 7, 2013, the Court granted Defendant's motion,
 7 dismissed Plaintiffs' PAGA claim without prejudice, and granted Plaintiffs thirty days
 8 to file an amended complaint. (Doc. No. 10.) On December 20, 2013, Defendant filed
 9 an answer to Plaintiffs' complaint. (Doc. No. 11.) On May 9, 2014, Plaintiffs filed a
 10 motion to amend the complaint, but withdrew that motion on June 9, 2014. (Doc. Nos.
 11 20, 31.)

12 On April 1, 2014, the magistrate judge held a scheduling conference and on
 13 April 3, 2014 the magistrate judge issued the Court's scheduling order. (Doc. Nos. 18,
 14 19.) During the scheduling conference, the parties discussed the impact of classified
 15 information on the discovery process. (Doc. No. 19.) The Court ordered the parties
 16 to meet and confer in good faith with regard to all discovery disputes, including
 17 disputes related to classified information. (Id.)

18 On May 15, 2014, Plaintiffs filed a motion for summary judgment on
 19 Defendant's exemption defense. (Doc. No. 21.) On May 21, 2014, Defendant filed an
 20 ex parte motion to stay the case for four months. (Doc. No. 22.) On May 27, 2014,
 21 the Court denied without prejudice Plaintiffs' motion for summary judgment and
 22 denied Defendant's motion to stay. (Doc. No. 26.)

23 **Discussion**

24 **I. Reconsideration of the Order Dismissing Plaintiffs' PAGA Claim**

25 On November 7, 2013, the Court granted Defendant's motion to dismiss
 26 Plaintiffs' PAGA claims for failure to comply with the class action pleading
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1 requirements of Federal Rule of Civil Procedure 23. (Doc. No. 10.) The Court found
 2 Rule 23 applied to PAGA claims pursued in federal court. (Id. at 5-6.) Plaintiffs now
 3 seek reconsideration of the Court's order. (Doc. No. 42.)

4 **A. Legal Standards for a Motion for Reconsideration**

5 A district court has inherent jurisdiction to modify, alter, or revoke a prior order.
 6 United States v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000). The Ninth Circuit has
 7 explained that reconsideration of a prior order "is appropriate if the district court (1)
 8 is presented with newly discovered evidence, (2) committed clear error or the initial
 9 decision was manifestly unjust, or (3) if there is an intervening change in controlling
 10 law." School District No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

11 "[A] motion for reconsideration should not be granted, absent highly unusual
 12 circumstances" Marlyn Nutraceuticals, Inc. v. Mucos Pharma. GmbH & Co., 571
 13 F.3d 873, 880 (9th Cir. 2009); see also Kona Enters. v. Estate of Bishop, 229 F.3d 877,
 14 890 (9th Cir. 2000) (explaining that reconsideration of a prior order is an extraordinary
 15 remedy, to be used sparingly in the interests of finality and conservation of judicial
 16 resources.). "[M]ere dissatisfaction with the court's order or belief that the court is
 17 wrong in its decision are not adequate grounds for relief." SLPR, LLC v. San Diego
 18 Unified Port Dist., 2010 U.S. Dist. LEXIS 55904, at *3 (S.D. Cal. Jun. 8, 2010); see
 19 Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981);
 20 United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001).
 21 "A motion for reconsideration 'may not be used to raise arguments or present evidence
 22 for the first time when they could reasonably have been raised earlier in the litigation.'"
 23 Marlyn Nutraceuticals, 571 F.3d at 880; see also Zimmerman v. City of Oakland, 255
 24 F.3d 734, 740 (9th Cir. 2001) (citations omitted) ("A district court does not abuse its
 25 discretion when it disregards legal arguments made for the first time on a motion to
 26 amend [a prior order], and a party that fails to introduce facts in a motion or opposition
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1 cannot introduce them later in a motion to amend by claiming that they constitute
 2 ‘newly discovered evidence’ unless they were previously unavailable.”). Denial of a
 3 motion for reconsideration is reviewed under the abuse of discretion standard. School
 4 District No. 1J, 5 F.3d at 1262.

5 **B. Analysis**

6 Plaintiffs’ argue the Court should reconsider its November 7, 2013 order
 7 dismissing Plaintiffs’ PAGA claim because the Ninth Circuit’s March 13, 2014 opinion
 8 in Baumann v. Chase Investment Services Corp., 747 F.3d 1117 (9th Cir. 2014), has
 9 changed the applicable law.³ (Doc. No. 42-1 at 2.) In Baumann, the Ninth Circuit
 10 addressed whether a district court may “exercise original jurisdiction over a PAGA
 11 action under the Class Action Fairness Act of 2005 (‘CAFA’).” Id. at 1119. The court
 12 held that CAFA provides no basis for federal jurisdiction over PAGA claims because
 13 PAGA claims are not “class actions” under CAFA. Id. at 1124. The issue in Baumann
 14 was narrow and the court did not address whether Rule 23 applies to PAGA claims
 15 over which a federal court has jurisdiction. See id. (“We do not today decide whether
 16 a federal court may allow a PAGA action otherwise within its original jurisdiction to
 17 proceed under Rule 23 as a class action. We hold only that PAGA is not sufficiently
 18 similar to Rule 23 to establish the original jurisdiction of a federal court under
 19 CAFA.”). Thus, Baumann does not represent “an intervening change in controlling
 20 law.” School District No. 1J, 5 F.3d at 1263. Accordingly, the Court denies Plaintiffs’
 21 motion for reconsideration.

22 **II. In Camera Review of Classified Evidence**

23 Plaintiffs request the Court order Defendant to present for in camera review the
 24 classified information Defendant claims is necessary to establish its defense along with
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26 ³Plaintiffs filed their motion for reconsideration more than four months after the Ninth
 27 Circuit issued Baumann, but have not attempted to explain the delay.

1 an explanation of which element of the defense is supported by the classified
2 information. (Doc. No. 43-1 at 7.) Defendant responds that the information it needs
3 to show Plaintiffs were exempt employees is “official” Navy information, classified,
4 or both and before Defendant can disclose the information, the Navy must give
5 permission to disclose the official information and declassify the classified information.
6 (Doc. No. 51 at 7-9.) Defendant also contends that in camera review of classified and
7 official information is unworkable because much of the information is testimonial and
8 will require ex parte examination of witnesses. (Id. at 17-18.)

9 Defendant claims Plaintiffs were exempt employees under one or more of the
10 learned professional, administrative, or teacher exemptions. (Doc. No. 11 at 8.) Under
11 the FLSA, employers are not required to pay overtime to “any employee employed in
12 a bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a)(1).
13 “To qualify for the learned professional exemption, an employee’s primary duty must
14 be the performance of work requiring advanced knowledge in a field of science or
15 learning customarily acquired by a prolonged course of specialized intellectual
16 instruction.” 29 C.F.R. § 541.301(a). This “primary duty” test has three elements: “(1)
17 [t]he employee must perform work requiring advanced knowledge; (2) [t]he advanced
18 knowledge must be in a field of science or learning; and (3) [t]he advanced knowledge
19 must be customarily acquired by a prolonged course of specialized intellectual
20 instruction.” Id. § 541.301(a)(1)-(3). Under the FLSA, an administrative employee is
21 one “[w]hose primary duty is the performance of office or non-manual work directly
22 related to the management or general business operations of the employer or the
23 employer’s customers and . . . includes the exercise of discretion and independent
24 judgment with respect to matters of significance.” Id. § 541.200(a)(2)-(3). A teacher
25 is “any employee with a primary duty of teaching, tutoring, instructing or lecturing in
26 the activity of imparting knowledge and who is employed and engaged in this activity
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1 as a teacher in an educational establishment by which the employee is employed.” Id.
2 § 541.303(a). “Educational establishments” include institutions of higher education
3 and “other educational institution[s].” Id. § 541.204(b).

4 **A. Official Information**

5 Official information is “[a]ll information of any kind, however stored, in the
6 custody and control of the [Department of Defense (“DOD”)] and its components
7 including the [Department of the Navy (“DON”)]; relating to information in the
8 custody and control of DOD or its components; or acquired by DOD personnel or its
9 component personnel as part of their official duties or because of their official status
10 within DOD or its components, while such personnel were employed by or on behalf
11 of the DOD or on active duty with the United States Armed Forces.” 32 C.F.R.
12 § 725.4(e). Navy personnel include, among others, active and former members of the
13 Navy and Navy contractors and their employees. Id. § 725.4(b). The Navy prohibits
14 personnel from providing “official information, testimony, or documents” without first
15 obtaining the Navy’s permission. Id. § 725.2(b). The Department of the Army has
16 substantially similar definitions and prohibitions. 32 C.F.R. §§ 516 App. F, 516.41(a),
17 516.41(b).

18 Defendant claims information needed to establish that Plaintiffs were exempt
19 employees, including testimony from Plaintiffs regarding their military training as
20 members of the Navy and Army, is official information that cannot be disclosed
21 without prior Navy and Army permission. (Doc. No. 51 at 9-10, 14, 18.) Whether the
22 information regarding Plaintiffs’ training and military service is official information
23 the Navy and Army must permit to be disclosed is a question the court does not need
24 to address in this Order.

25 A private party has no standing to enforce military regulations that require a
26 witness to receive permission from the military before testifying. United States ex rel.
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1 Treat Brothers Co., 986 F.2d 1110, 1119 (7th Cir. 1993). In Treat Brothers, the
2 defendant claimed the district court erred by admitting the testimony of two Army
3 engineers who did not receive written permission before testifying as to official
4 information. Id. at 1118. The Seventh Circuit held that the defendant, as a private
5 party, had no standing to enforce the Army regulations requiring written permission to
6 testify because the Army regulations were not intended to benefit private litigants. Id.
7 at 1119. (“[T]he regulations are meant to prescribe ‘policy and procedures for the
8 representation of the Department of the Army and its personnel in civilian court
9 proceedings,’ as well as the ‘prosecution of offenses committed on military
10 installations; and the release of information and appearance of witnesses in criminal
11 and civil court actions.’”) (quoting 32 C.F.R. § 516.1 et seq.). The court noted that “if
12 any violation of the regulations occurred, this would be a matter between the two
13 witnesses and the Army, not between [the private litigants].” Id.

14 Here, as in Treat Brothers, the litigation is between private parties and the
15 government has not intervened to enforce any military regulations. The Army
16 regulations at issue are the same as those in Treat Brothers and are substantially similar
17 to the corresponding Navy regulations. See id. at 1118. Thus, Defendant has no
18 standing to invoke the Army and Navy regulations to prevent Plaintiffs or other
19 witnesses from testifying or providing information.

20 Defendant also claims the Navy’s regulations regarding official information
21 require the Navy to give permission before Defendant discloses the information
22 required for its defense. (Doc. No. 51 at 7-9.) Section 725’s purpose is to “prescribe[]
23 conduct of [Navy] personnel in response to a litigation request or demand.” 32 C.F.R.
24 § 725.1. Section 725 regulates the response of Navy personnel to discovery requests
25 that seek official information. See, e.g., id. § 725.5(c) (“This instruction provides
26 guidance only for DON operation and activities of its present and former personnel in
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1 responding to litigation requests.”). Defendant has provided no support for its claim
 2 that section 725 applies to information a defendant seeks to introduce to support its
 3 defense. Accordingly, the Navy’s regulations regarding official information do not
 4 prevent Defendant from disclosing information within its control establishing Plaintiffs
 5 were exempt employees.

6 **B. Classified Information**

7 Classified information is “information or material that has been determined by
 8 the United States Government pursuant to an Executive order, statute, or regulation,
 9 to require protection against unauthorized disclosure for reasons of national security.”
 10 18 U.S.C. App. 3 § 1(a). In criminal cases, the Classified Information Procedures Act
 11 (“CIPA”) provides procedures for disclosing and using relevant classified information.
 12 See id. § 1 et seq. CIPA only applies to criminal cases, but courts and the government
 13 follow similar procedures in civil cases. Robert Timothy Reagan, Keeping
 14 Government Secrets: A Pocket Guide on the State-Secrets Privilege, the Classified
 15 Information Procedures Act, and Classified Information Security Officers 9 (2d ed.
 16 2013); see 28 C.F.R. § 17.17(c).

17 CIPA provides for a hearing to determine how classified evidence will be
 18 handled at trial. 18 U.S.C. App. 3 § 6(a). The hearing may be conducted in camera and
 19 may be used to determine the use, relevancy, and admissibility of classified
 20 information. Id.; see also 28 C.F.R. § 17.17(c)(1) (providing that in civil cases, the
 21 government shall seek a “determination by the court of the relevance and materiality
 22 of the classified information in question”). If the court determines that the classified
 23 information presented at the hearing may not be disclosed, the court is to seal the
 24 hearing record and preserve it for appeal. Id. § 6(d). CIPA hearings may be held ex
 25 parte. Reagan, Keeping Government Secrets at 13; United States v.
 26 Klimavicius-Viloria, 144 F.3d 1249, 1261 (9th Cir. 1998). CIPA provides that when
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1 the court determines that classified information must be disclosed to the defense, the
2 government “may move that, in lieu of the disclosure of such specific classified
3 information, the court order: (A) the substitution for such classified information of a
4 statement admitting relevant facts that the specific classified information would tend
5 to prove; or (B) the substitution for such classified information of a summary of the
6 specific classified information.” 18 U.S.C. App. 3 § 6(c). CIPA also recognizes that
7 a key tool in protecting classified information from disclosure is the protective order.
8 See id. § 3; 28 C.F.R. § 17.17(c)(2).

9 Here, Defendant has not provided any specific details about what items of
10 classified information, either documentary evidence or summaries of testimony,
11 support its claim that Plaintiffs were exempt employees and how the classified
12 information supports that claim. Further, neither party has taken any depositions.
13 Because the primary issue is whether Plaintiffs were exempt learned professionals,
14 teachers, or administrative employees, information regarding Plaintiffs’ employment
15 at A-T Solutions and their experience and qualifications is known to all parties.⁴ For
16 that reason, the Court orders Defendant to depose Plaintiffs within 60 days of this
17 Order. If some of this information is classified and already known to both sides,
18 further disclosure can be handled by protective order and filing documents under seal.
19 Neither Defendant nor Plaintiffs may depose any other witnesses until Defendant has
20 deposited Plaintiffs.⁵

21 Defendant must provide to the Court for in camera review information
22 supporting a threshold showing that Plaintiffs were exempt employees. Defendant is
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24 ⁴The Court disagrees with Defendant’s position that an employer cannot discuss with
25 its own former employees what those employees did while employed.

26 ⁵Plaintiffs and their counsel are on notice that Plaintiffs’ counsel may be prevented from
27 reviewing certain discovery materials without a security clearance. Plaintiffs’ counsel must
28 take steps to secure a clearance or retain counsel with a security clearance.

1 not required to provide all classified information it believes to be relevant to the case,
 2 but must provide a summary of the classified information that supports its threshold
 3 showing. The Court orders Defendant to submit this summary to the Court within 45
 4 days of this Order. Defendant must promptly present this Order to the Navy and report
 5 to the Court the Navy's response within 30 days of this Order.

6 **III. Motion to Stay or, Alternatively, Extend the Discovery Cut-Off**

7 Defendant has requested the Court stay the case for six months or, alternatively,
 8 extend the discovery cut-off by one year so Defendant can continue its effort to get the
 9 Navy to declassify information Defendant claims is pertinent to its defense. (Doc. No
 10 44 at 2.)

11 The power to stay a case is "incidental to the power inherent in every court to
 12 control the disposition of the causes on its docket with economy of time and effort for
 13 itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254
 14 (1936). The circumstances of this case do not warrant a stay. In the several months
 15 since Defendant's previous motion to stay, the parties have achieved little progress in
 16 resolving their discovery disputes regarding information Defendant claims is classified.
 17 Further, the Navy has indicated that it will not intervene in this case and it has not
 18 shown any willingness to declassify any information. A six-month stay will not assist
 19 in resolving these issues. The Court declines to extend the discovery cut-off by one
 20 year, but will extend the time for discovery by 90 days. Accordingly, the Court denies
 21 Defendant's motion to stay and extends the discovery cut-off by 90 days.

22 **IV. Scheduling Order for Cross-Motions for Summary Judgment⁶**

23 The Court sets the following briefing schedule:

- 24 (1) Plaintiffs must file and serve their motion for summary judgment on or

26 ⁶ Cross-motions for summary judgment are particularly appropriate in this case. For
 27 example, Plaintiffs argue that a college degree is required for the professional employee
 28 exemption to apply, Defendant argues a college degree is not required.

1 before February 9, 2015.

2 (2) Defendant must file and serve its cross-motion for summary judgment and
3 opposition to Plaintiffs' motion on or before March 9, 2015.

4 (3) Plaintiffs must file and serve their opposition to Defendant's cross-motion
5 and reply to Defendant's opposition on or before March 23, 2015.

6 (4) Defendant must file any reply to Plaintiffs' opposition on or before April
7 6, 2015.

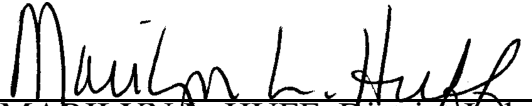
8 A hearing on the parties' motions is set for April 13, 2015 at 10:30 a.m.

9 **Conclusion**

10 Based on the above, the Court denies Plaintiffs' motion for reconsideration,
11 grants in part and denies in part Plaintiffs' motion for an order requiring Defendant to
12 submit classified evidence for in camera review, grants in part and denies in part
13 Defendant's motion to stay or, alternatively, extend the discovery cut-off, and grants
14 in part and denies in part Defendant's objection to the magistrate judge's discovery
15 order without prejudice to further request by Plaintiffs as to active duty personnel.

16 **IT IS SO ORDERED.**

17 DATED: September 10, 2014

18 
19 MARILYN L. HUFF, District Judge
20 UNITED STATES DISTRICT COURT

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